

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Shadman Khan	Team: Squad #12	CCRB Case #: 201906066	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 06/19/2019 3:00 PM	Location of Incident: § 87(2)(b)	18 Mo. SOL 8/5/2021	Precinct: 81		
Date/Time CV Reported Fri, 06/28/2019 10:13 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 07/11/2019 10:51 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Sukhdeep Singh	19810	965873	079 PCT
2. SGT Mark Xylas	01685	948160	079 PCT
3. POM Alvin Guthrie	16947	955965	079 PCT
4. POF Jena Leocadio	05460	956044	079 PCT
5. POM Joshua Acosta	03792	955705	079 PCT
6. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Kerine Bunsie	26369	955514	081 PCT
2. POM Roberto Stultz	26945	941149	079 PCT
3. POM Daniel Palminteri	21071	963195	079 PCT
4. POM Nicholas Prisco	10937	957054	081 PCT
5. DI Charles Minch	00000	921598	079 PCT
6. POM Melvin Clarke	03927	955822	079 PCT
7. POM David Chung	20709	962982	079 PCT
8. SGT Alex Morocho	5420	939794	HOSS

Officer(s)	Allegation	Investigator Recommendation
A. Officers	Force: Officers pointed their guns at § 87(2)(b)	
B.SGT Mark Xylas	Abuse: Sergeant Mark Xylas damaged § 87(2)(b) property.	
C.SGT Mark Xylas	Abuse: Sergeant Mark Xylas entered § 87(2)(b) in Brooklyn.	
D.SGT Mark Xylas	Abuse: Sergeant Mark Xylas searched § 87(2)(b) in Brooklyn.	
E.SGT Mark Xylas	Abuse: Sergeant Mark Xylas damaged § 87(2)(b) property.	

Officer(s)	Allegation	Investigator Recommendation
F.POF Jena Leocadio	Discourtesy: Police Officer Jena Leocadio spoke discourteously to § 87(2)(b)	
G.POM Sukhdeep Singh	Abuse: Police Officer Sukhdeep Singh pointed his taser at § 87(2)(b)	
H.SGT Mark Xylas	Force: Sergeant Mark Xylas pointed his gun at § 87(2)(b)	
I.POM Alvin Guthrie	Force: Police Officer Alvin Guthrie pointed his gun at § 87(2)(b)	
J. Officers	Force: Officers used physical force against § 87(2)(b)	
K.POM Alvin Guthrie	Abuse: Police Officer Alvin Guthrie searched § 87(2)(b) in Brooklyn.	
L.POM Joshua Acosta	Abuse: Police Officer Joshua Acosta searched § 87(2)(b) in Brooklyn.	

Case Summary

On June 28, 2019, § 87(2)(b) contacted IAB to file this complaint, which was subsequently received by the CCRB.

On June 19, 2019, at approximately 3:00pm, § 87(2)(b) entered his home, located at § 87(2)(b) in Brooklyn, through the front door and went to the bathroom. While § 87(2)(b) was inside the bathroom, multiple officers from the 79th Precinct pointed their firearms toward § 87(2)(b) (Allegation A – Force: Gun Pointed, § 87(2)(g)) Sgt. Xylas proceeded to forcibly open and enter through the front door of § 87(2)(b) (Allegation B – Abuse of authority: Property Damage, § 87(2)(g)) (Allegation C – Abuse of Authority: Entry of Premises, § 87(2)(g)) (Allegation D – Abuse of Authority: Search of Premises, § 87(2)(g)) Sgt. Xylas walked upstairs to the second floor and kicked down a door to a bedroom to search for § 87(2)(b) (Allegation E – Abuse of Authority: Property Damage, § 87(2)(g)) During the time of the entry, § 87(2)(b) heard PO Jena Leocadio from the 79th Precinct ask § 87(2)(b) “Where the fuck is he at?” (Allegation F – Discourtesy: Word, § 87(2)(g))

§ 87(2)(b) unlocked the bathroom door, opened it, and stepped out with his hands up. PO Sukhdeep Singh from the 79th Precinct pointed a taser toward § 87(2)(b) chest as the door opened (Allegation G – Abuse of Authority: Threat of force, § 87(2)(g)) Sgt. Xylas and PO Guthrie pointed firearms toward § 87(2)(b) in the bathroom as PO Guthrie instructed § 87(2)(b) to come out and get on the ground (Allegation H: Force: Gun Pointed, § 87(2)(g)) (Allegation I – Force: Gun Pointed, § 87(2)(g)) As soon as § 87(2)(b) exited the bathroom, officers grabbed and held him down on the floor (Allegation J – Force: Physical Force, § 87(2)(g))

PO Guthrie searched a cabinet and the location around the bathroom for a gun before he left the house (Allegation K – Search of premises, § 87(2)(g)) PO Acosta from the 79th Precinct searched a room with multiple bags for a gun before he left the house (Allegation L – Search of Premises, § 87(2)(g))

The investigation obtained Body-Worn Camera (BWC) footage (Board Review 01-20; summaries attached to Board Review 21-39).

Findings and Recommendations

Allegation (A) Force: Officers pointed their guns at § 87(2)(b)

The investigation determined that on June 19, 2019, at approximately 3:00 p.m. Officer Stultz and Officer Singh were in a police vehicle in the vicinity of § 87(2)(b) when a cab driver parked in front of their vehicle, waved at the officers as he exited the vehicle, and told the officers that two passengers had given him counterfeit money and pointed an unknown object at his head. The two passengers then fled the cab, pushing the cab driver to the ground as they did so. Officer Stultz and Officer Singh told the passengers to stop, but the passengers fled east on Halsey Street. Officer Stultz remained at the vehicle with the cab driver and radioed for assistance while Officer Singh chased the passengers. One of the passengers dropped a firearm and lost a shoe. Officer Singh remained with the firearm while the shoeless passenger continued running east on Halsey Street.

§ 87(2)(b) reported that at approximately the same time, he left his residence at § 87(2)(b) and walked towards Lewis Avenue to go to the deli. He observed several marked and unmarked vehicles and several officers using flashlights to search the ground. Because he did not wish to get involved with the police interaction, he turned around and walked back to his residence. When he was in front of his residence, an officer identified by the investigation as Sgt. Xylas pulled up in an

unmarked vehicle and told him, “Come here.” § 87(2)(b) stated that he walked inside the residence as § 87(2)(b) another resident of § 87(2)(b) who had been sitting outside, told Sgt. Xylas that § 87(2)(b) was not the suspect they were seeking.

In § 87(2)(b) statement to the CCRB (Board Review 40), he had been seated outside of § 87(2)(b) when § 87(2)(b) returned to the house. Sgt. Xylas arrived at the front of the house and told § 87(2)(b) to “freeze.” Once § 87(2)(b) went inside, multiple officers pointed their guns toward § 87(2)(b) chest area. § 87(2)(b) stated that the officers pointed their guns at him for approximately 10 minutes before they began to enter the house.

In Sgt. Xylas’ statement to the CCRB (Board Review 41), he had responded to a call for assistance at Halsey Street. Once he arrived, he spoke to PO Stultz and PO Singh, who both informed him that there was a dispute with a taxi driver and two black males. PO Stultz and PO Singh chased the males until one of them dropped a firearm on the ground. While Sgt. Xylas spoke to PO Stultz, he observed § 87(2)(b) further down Halsey Street, approximately 100-150 feet away. PO Stultz looked at § 87(2)(b) and informed Sgt. Xylas that he was one of the perpetrators. Sgt. Xylas returned to his vehicle and drove after § 87(2)(b). Once he reached § 87(2)(b) he told § 87(2)(b) to stop, who instead proceeded to go inside § 87(2)(b). Sgt. Xylas noticed § 87(2)(b) outside of the location but did not point his gun at him. Sgt. Xylas was mainly focused on § 87(2)(b) at the time. Sgt. Xylas stated that it was “a matter of seconds” between when § 87(2)(b) entered the location followed by Sgt. Xylas. Sgt. Xylas also stated that he only drew his weapon some time after he entered the incident location and before he went up the stairs.

In Sgt. Xylas’ BWC video (Board Review 05), he is seated inside the front driver seat of a moving vehicle, which he stops soon after the video starts. At 00m07s of the external timer, Sgt. Xylas exits the vehicle and immediately runs toward the front door of § 87(2)(b) and breaks open the front door. § 87(2)(b) is seen on the right side of the screen stating something indiscernible to Sgt. Xylas. However, Sgt. Xylas does not stop to interact with any civilian at the time and does not point his gun at § 87(2)(b). At 00m17s into the video, Sgt. Xylas’ hands are visible as he steps out of the building, at which point his right hand is empty and his left hand contains a radio. At 00m51s into the video, Sgt. Xylas first draws his gun.

In PO Palminteri’s BWC video (Board Review 04), he is seen exiting his vehicle and running toward § 87(2)(b). PO Palminteri runs past § 87(2)(b) and enters the building. At 00m22s, he is seen holding a radio in his right hand. PO Palminteri is first seen holding a gun in his right hand at 00m43s, when he is already on the stairs leading to the second floor of the house. § 87(2)(b) is not seen at this time.

In PO Leocadio’s BWC video (Board Review 07), at 00m32s of the timer, PO Leocadio and other officers are seen entering § 87(2)(b). No guns are seen drawn during the entry. No officers stop to speak to § 87(2)(b) who can be heard in the background stating, “What are you doing?” At 00m42s, a female officer is heard instructing another officer who just entered the location, “Put your gun down.” This officer was identified as PO David Chung by the investigation. At 01m07s, two male officers are seen with their guns drawn and pointing it upwards toward a window.

In PO Chung’s BWC video (Board Review 08), at 00m22s of the timer, PO Chung runs into § 87(2)(b). PO Chung holds out his left hand, which is empty, toward § 87(2)(b) before entering the building, where PO Leocadio and another officer are seen. At 00m42s, PO Chung walks up the stairs and a gun is first seen in PO Chung’s right hand.

In PO Joseph's BWC video (Board Review 10), at 00m40s of the timer, multiple officers are seen entering § 87(2)(b). While some officers have their hands on their belts and weapons, no officer is seen pointing a gun at § 87(2)(b) at any point.

Although § 87(2)(b) claimed that officers pointed their guns at him as he stood outside of the building, the BWC footage from multiple officers show that guns were not pointed toward § 87(2)(b). The footage indicated that the guns drawn by officers were done so after the officers were already inside of the building. Additionally, § 87(2)(b) statement that officers pointed their weapons at him for 10 minutes prior to the entry conflict with Sgt. Xylas' statement and BWC footage, both of which indicate the entry by Sgt. Xylas and other officers occurred immediately after Sgt. Xylas exited his vehicle.

§ 87(2)(g)

Allegation (B) Abuse of Authority: Sergeant Mark Xylas damaged § 87(2)(b) property.

Allegation (C) Abuse of Authority: Sergeant Mark Xylas entered § 87(2)(b) in Brooklyn.

Allegation (D) Abuse of Authority: Sergeant Mark Xylas searched § 87(2)(b) in Brooklyn.

Allegation (E) Abuse of Authority: Sgt. Xylas damaged § 87(2)(b) property.

It is undisputed that Sgt. Xylas entered and searched § 87(2)(b) in Brooklyn. Sgt. Xylas, as per his testimony to the CCRB, broke through the door to enter the building. Sgt. Xylas damaged a bedroom door during his search of the home for § 87(2)(b).

As noted in the discussion of Allegation A, § 87(2)(b) stated that Sgt. Xylas told him, "Come here" prior to pursuing him into § 87(2)(b). Once § 87(2)(b) entered the house, he went up to the second floor and entered his grandmother's, whose name he did not provide, room. He entered the bathroom in that room and locked the door. While inside, he heard loud bangs coming from the downstairs. § 87(2)(b) learned after the incident that officers had broken down the front door, which caused the lock to sustain damage. § 87(2)(b) also heard loud bangs coming from outside of his grandmother's room, which he later learned came from officers breaking down his grandmother's door, which caused the lock to sustain damage.

According to § 87(2)(b) statement, after Sgt. Xylas told § 87(2)(b) to "freeze," Sgt. Xylas placed his forearm on the front door and used his bodyweight to push the front door open, which damaged the wooden frame. Sgt. Xylas and a few other officers then immediately entered § 87(2)(b) through that front door.

As noted in the discussion of Allegation A, Sgt. Xylas stated that after PO Stultz identified § 87(2)(b) as the suspect, he followed § 87(2)(b) into § 87(2)(b) and broke through the front door. Sgt. Xylas did not recall exactly how he broke open the door. He stated that he "didn't stop" as he ran through the front door and noted that it was possible that he put his foot up against the door in order to break it open. The door broke once Sgt. Xylas forced the entry. Multiple officers entered the location following Sgt. Xylas' entry. Sgt. Xylas did not provide a specific reason for breaking down the door to force entry. After the entry, Sgt. Xylas went up the stairs and searched for § 87(2)(b). According to Sgt. Xylas, he only looked briefly in a room at the top of the stairs, and then proceeded to the third floor to search for § 87(2)(b). Once he was at the third floor, he

heard shouting from the second floor and went back down, where he saw § 87(2)(b) being apprehended.

In PO Stultz's BWC (Board Review 01), at 00m31s of the video timer, PO Stultz and PO Singh exit their vehicle and walk toward another vehicle. PO Stultz states, "Robbery?" and runs after two males with PO Singh. While running, PO Stultz is heard stating, "We got two male perps. We're running down Halsey," into his radio. He then states, "Two male blacks," and crosses to the other side of Halsey Street, where a blue shoe is seen on the floor. PO Stultz again speaks into the radio, "One male black. He's wearing all black, bookbag. And the other one is wearing grey, grey jeans and a bookbag." At 05m23s, PO Stultz meets with multiple officers who have gathered around a firearm located on the ground. The officers discuss descriptions of the perpetrators and the direction that they fled towards. At 05m43s, PO Stultz points to the right side of the screen and states, "That's one of them." An unidentified officer states, "That's one of them?" to which PO Stultz replies, "I think so." An officer is seen walking toward the direction PO Stultz pointed at as the unidentified officer asks, "Was he wearing white sneakers?" PO Stultz returns to his vehicle stating, "I got one of his sneakers." A few seconds later, he states, "White and blue." At 09m32s, a female officer asks PO Stultz, "Is it him?" and gestures toward multiple officers with civilians. PO Stultz confirms "Yea."

In Sgt. Xylas' BWC video, once he exited his vehicle at 00m07s, he immediately runs toward the front door of § 87(2)(b) and breaks open the door in order to enter the location. There is no audio until 00m30s into the video. Sgt. Xylas is not heard making any statements toward § 87(2)(b) prior to the entry. The interaction between Sgt. Xylas and PO Stultz where PO Stultz identified § 87(2)(b) as a subject is not seen in the video. § 87(2)(b) is not seen during the entry into the building. At 00m22s of the video timer, Sgt. Xylas pushes open a door and looks inside briefly. At 00m37s, the door swings open from what appears to be some sort of external force. Sgt. Xylas continues to the third floor and looks around with his flashlight when shouting is heard from the second floor, which Sgt. Xylas runs toward. § 87(2)(b) is next fully seen outside and apprehended at 03m23s, where he is wearing a dark green sweater with small blue patches. § 87(2)(b) lower body cannot be seen in the video. At 03m57s, Sgt. Xylas is outside and points to PO Stultz stating, "He just saw him and said I think that's him."

In PO Palminteri's BWC footage, at 00m44s of the external timer, PO Palminteri can be seen pointing a gun toward a bedroom door, which is slightly open. On the immediate right of that door, another room can be seen with the door slightly open. An officer can be seen kicking the door twice until it breaks off from the hinges. The video only partially shows the officer, who is located directly to the right of PO Palminteri.

Based on PO Palminteri and Sgt. Xylas' BWC videos, the identity of the officer seen breaking the door down in PO Palminteri's BWC can be identified as Sgt. Xylas. Multiple officers can be heard stating, "Let me see your hands," and, "Step out," indicating that officers were searching for § 87(2)(b) when this occurred.

In order for an officer to enter and search a private residence of a suspect they are in the process of chasing; they must meet the requirements of the hot pursuit doctrine. This includes a clear showing of probable cause to believe that the suspect committed the crime, strong reason to believe the suspect is in the premises being entered, and an immediate or continuous pursuit of a suspect from the scene of a crime. Additionally, the arrest must be set in motion in a public place. People v. Hunter, 92 A.D.3d 1277 (Board Review 42).

A police officer may conduct a stop against a person when they have individualized suspicion

that the person has committed, is committing, or is about to commit a felony or Penal Law misdemeanor. The officer may then detain and question the person to determine if there is probable cause to arrest. Patrol Guide Procedure 212-11: Investigative Encounters (Board Review).

§ 87(2)(g)

PO Stultz's BWC footage shows that the positive identification given by PO Stultz was, "I think so." Although Sgt. Xylas informed the CCRB that PO Stultz had identified § 87(2)(b) as a perpetrator, even Sgt. Xylas's contemporaneous statements in his BWC confirm his knowledge that PO Stultz reported only that he thought that § 87(2)(b) might be the person the officers sought. § 87(2)(g)

§ 87(2)(g) Although PO Stultz and PO Singh initially pursue the robbery suspects from the cab, by the time Sgt. Xylas arrived at the incident location, the officers had lost sight of the suspects and had gathered with other officers to discuss descriptions of the robbery suspects. BWC footage shows that approximately four minutes had elapsed between the time the officers stopped their pursuit of the suspects and the time that Sgt. Xylas began his pursuit of § 87(2)(b) and that officers had not seen where the suspects or § 87(2)(b) were during this time.

§ 87(2)(g)

Allegation (F) Discourtesy: Police Officer Lena Leocadio spoke discourteously to § 87(2)(b)

It is undisputed that PO Leocadio used profanity while inside of § 87(2)(b) when she said, "Where the fuck is he at?"

§ 87(2)(b) informed the investigation while he was inside his grandmother's bathroom, he heard multiple officers screaming at § 87(2)(b). § 87(2)(b) heard an officer, identified by the investigation as PO Leocadio, state, "Where the fuck is he at?" toward § 87(2)(b).

In § 87(2)(b) statement, he continuously asked the officers what they were doing as they entered § 87(2)(b). § 87(2)(b) believed that officers may have told him to "Shut the fuck up" several times. § 87(2)(b) did not recall which officers made the statements to him.

In PO Leocadio's BWC, at approximately 00m38s of the external timer she can be seen running toward other officers inside of § 87(2)(b). PO Leocadio enters and while standing near the entrance of the residence asks, "Where the fuck is he at?" twice toward other officers. § 87(2)(b) is not seen in the BWC video. § 87(2)(b) can be heard from a distance continuously asking, "What are you doing?" No other profanity can be heard from any other officers.

NYPD's disciplinary decisions "have consistently held that when a police officer uses an otherwise impolite word during a stressful street encounter where that officer is attempting to maintain control

of the situation, the police officer's verbal slip does not rise to the level of actionable misconduct." DAO DCT Case # 201818951 (Board Review 54)

While PO Leocadio did use profanity, it was during an entry into a home where officers were looking for § 87(2)(b) § 87(2)(g)

Allegation (G) Abuse of Authority: Police Officer Sukhdeep Singh pointed his taser at

§ 87(2)(b)

In § 87(2)(b) statement, he stepped out of the bathroom once he heard officers tell him to come out. § 87(2)(b) saw multiple officers pointing firearms at him. He saw PO Singh, whom he described as an "Indian" male, pointing a taser at his chest.

In PO Acosta's BWC video, at 00m52s of the timer, PO Acosta is seen entering a room with a taser held in his right hand out in front of him and pointed toward the ground and multiple officers, who are in the process of arresting § 87(2)(b). A second officer is also seen across PO Acosta with his taser held in his right hand and pointed down toward § 87(2)(b) on the ground. The second officer appears to be a dark-skinned male, approximately 5'10, with a medium build, and is dressed in uniform. The officer's face is not seen in the BWC footage. The video does not definitively depict PO Singh at the location.

In PO Guthrie's BWC video, he is seen pointing a firearm at the bathroom inside § 87(2)(b). A second officer is seen to his right also pointing a firearm. At 00m19s, a dark-skinned male officer with a medium build wearing a baseball cap is seen pointing a taser toward the bathroom.

In Sgt. Xylas' BWC video at approximately 01m49s of the timer, a dark-skinned male officer with a medium build and wearing a baseball cap is seen pointing a taser toward § 87(2)(b) who is on the ground.

In PO Singh's testimony to the CCRB (Board Review 44), he stated that while he was at the location where the gun was found, he received a radio call that informed him a suspect was arrested. PO Singh was asked to go to § 87(2)(b) to make an identification of the suspect by an officer he believed was his commanding officer, DI Charles Minch. He believed this occurred after § 87(2)(b) had already been apprehended. PO Singh stated that he did not feel comfortable identifying the robbery suspects because he had not seen them clearly. He did not recall whether he went to § 87(2)(b) but stated that he did not enter the location. PO Singh stated that he never pointed his taser at anyone or threatened to use the taser against anyone. PO Singh did not generate BWC footage during this incident. PO Singh was dressed in uniform during this incident.

In PO Acosta's statement to the CCRB, he stated that he had his taser out at the time but did not point it toward anyone. PO Acosta did not recall if any other officer had their tasers out as well.

In PO Guthrie's statement to the CCRB, he stated that an officer did have a taser out during the incident. However, PO Guthrie did not know who this officer was and viewing his BWC video would not help him identify the officer.

In Sgt. Xylas' statement to the CCRB, he was shown a his BWC video at 01m50s of the timer, which showed a dark-skinned male officer pointing a taser toward § 87(2)(b) on the ground. Sgt.

Xylas was unable to identify this officer.

§ 87(2)(b) alleged that PO Singh pointed a gun at him. Conversely, PO Singh stated that he never entered § 87(2)(b) and that he remained near the firearm that had been recovered, which was at a different location altogether. PO Singh stated that he only saw § 87(2)(b) once he returned to the 79th Precinct stationhouse. PO Singh did not generate BWC footage during the incident, and so his account about his presence at the residence cannot be definitively confirmed. BWC footage from the time that § 87(2)(b) was apprehended does indicate that while other officers had their Tasers drawn, PO Singh is not conclusively depicted as one of those officers and was not identified by other officers.

§ 87(2)(g)

Allegation (H) Force: Sergeant Mark Xylas pointed his gun at § 87(2)(b)

In § 87(2)(b) statement, after he stepped out of the bathroom, he saw many officers with their weapons pointed toward him. Among the officers, he recognized Sgt. Xylas.

In Sgt. Xylas' statement, he was on the third floor of § 87(2)(b) when he heard shouting coming from the floor below. At the time, Sgt. Xylas did have his weapon drawn. Once Sgt. Xylas went down to the second-floor bedroom, he saw § 87(2)(b) already being placed in custody in the bedroom to the left of the staircase. Sgt. Xylas did not state if he had his weapon pointed or drawn at this time.

In Sgt. Xylas' BWC video, he is seen on the third floor with his weapon drawn, calling out for § 87(2)(b). Shouting is then heard off camera, followed by Sgt. Xylas running back down the stairs and toward a bedroom. Once inside, multiple officers can be seen placing § 87(2)(b) into custody. Sgt. Xylas is only seen in the bedroom after § 87(2)(b) is already on the floor. Sgt. Xylas is not seen pointing his firearm toward § 87(2)(b) at this time.

It is undisputed that Sgt. Xylas had his firearm out when he was inside § 87(2)(b) and searched for § 87(2)(b). According to § 87(2)(b) statement, Sgt. Xylas had stood outside of the bathroom when he exited and pointed his firearm toward § 87(2)(b). This statement conflicts with Sgt. Xylas' statement and corroborating BWC video footage. § 87(2)(g)

Allegation (I) Force: Police Officer Alvin Guthrie pointed his gun at § 87(2)(b)

In § 87(2)(b) statement, after he stepped out of the bathroom, multiple officers pointed their weapons toward them. Among the officers, § 87(2)(b) recognized PO Guthrie.

According to PO Guthrie's statement (Board Review 45), he entered a bedroom which contained a bathroom as well. The bathroom door had been closed and locked, so PO Guthrie pointed his weapon toward the door and knocked. § 87(2)(b) opened the door and stepped out of the bathroom, which is when other officers placed § 87(2)(b) in handcuffs. PO Guthrie then entered the bathroom to conduct a search.

In PO Guthrie's BWC video footage (Board Review 11), at 00m20s of the external timer, PO Guthrie has his weapon out and pointed toward the bathroom door. Audio comes on and officers

can be heard telling § 87(2)(b) to get on the floor. After § 87(2)(b) is seen being placed in custody, PO Guthrie then holsters the weapon and searches the bathroom.

An officer may draw or display firearms based on an articulable belief that the potential for serious physical injury is present. When an officer determines that this potential is no longer present, he or she will holster the firearm as soon as it is practicable. Patrol Guide Procedure 221-01: Force Guidelines (Board Review 46).

It is undisputed that PO Guthrie had his weapon drawn and pointed when he searched for § 87(2)(b). This is stated by PO Guthrie and corroborated by his BWC video. The entry and search for § 87(2)(b) was related to him being a possible suspect in a robbery involving the use of a gun.

§ 87(2)(g) Additionally, the door to the bathroom was locked, and PO Guthrie had no way of knowing what § 87(2)(b) had been doing in the bathroom. Once § 87(2)(b) exited the bathroom and was placed in handcuffs, PO Guthrie holstered his weapon.

According to Patrol Guide 221-01, an officer is permitted to draw and point his firearm if there is a potential for serious physical injury. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Allegation (J) Force: Officers used physical force against § 87(2)(b)

In § 87(2)(b) statement, after he had opened the bathroom door and exited the bathroom, he was issued instructions to get on the floor. § 87(2)(b) began to lean down in order to go toward the floor when an officer stepped behind him pushed him on his back toward the floor. § 87(2)(b) was unable to describe this officer. This action caused § 87(2)(b) chest made contact with the floor and his head was held down on the ground so that his face was turned to the side. § 87(2)(b) initially stated that the officers “slammed” his head to the ground, but later stated that they only held his head down. § 87(2)(b) could only describe officers as placing their hands on his back and pushing him towards the ground. § 87(2)(b) believed PO Guthrie was involved in the takedown but could not attribute any specific actions toward him.

According to PO Guthrie, after § 87(2)(b) had stepped out of the bathroom, other officers stepped forward and placed handcuffs on him. There were no issues in placing § 87(2)(b) in handcuffs. Afterwards, PO Guthrie went inside of the bathroom in order to find a gun that was mentioned over the radio.

In PO Guthrie’s BWC video at approximately 00m20s of the external timer, officers are heard telling § 87(2)(b) to exit the bathroom and get on the floor. After § 87(2)(b) exits, he is seen kneeling. While the view is obstructed by PO Guthrie’s gun and another officer, no officers are seen standing behind § 87(2)(b). One officer appears to hold § 87(2)(b) left arm as § 87(2)(b) leans toward the ground. Other officers are to § 87(2)(b) side and front as he goes to the ground. PO Guthrie does not approach § 87(2)(b).

While § 87(2)(b) alleged that officers and possibly PO Guthrie may have used force to take him to the ground, this is conflicted by PO Guthrie’s statement. Claims by PO Guthrie that stated he was not involved in the handcuffing process was supported by his BWC footage. Footage seen from PO Guthrie’s BWC showed § 87(2)(b) leaning toward the ground as one officer held him by his left

arm but is unclear if any force was used to push him toward the ground. The actions alleged is not clearly seen in PO Guthrie's BWC or other officers' BWC footage. The investigation did not obtain footage from the officers involved in the arrest that fully showed the entirety of the apprehension of § 87(2)(b) § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation (K) Abuse of Authority: Police Officer Alvin Guthrie searched § 87(2)(b) in Brooklyn.

Allegation (L) Abuse of Authority: Police Officer Joshua Acosta searched § 87(2)(b) in Brooklyn.

In § 87(2)(b) statement, after he had been placed in handcuffs in a bathroom in his grandmother's bedroom, officers transported him to the 79th Precinct stationhouse. After approximately three hours, § 87(2)(b) was released from the stationhouse and returned to § 87(2)(b) where he learned that officers searched his grandmother's bedroom and bathroom based on the fact that the bed had been shifted and bathroom cabinets were opened and disheveled.

In PO Guthrie's statement after § 87(2)(b) exited the bathroom, other officers arrested him in the connected bedroom while he entered the bathroom that § 87(2)(b) had exited from. PO Guthrie entered the bathroom and searched the medicine cabinet and behind the toilet for a gun that was mentioned on the radio call that brought him to the incident location. The radio call informed PO Guthrie that there were two black male suspects and that a gun was involved, but no other information was provided. PO Guthrie did not receive any instruction to perform this search and did not recall any other specific officer performing any searches. PO Guthrie did not locate any weapons during his search.

In PO Acosta's statement (Board Review 47) he affirmed that after he entered § 87(2)(b) he searched several drawers and rooms for § 87(2)(b). When § 87(2)(b) was located inside of a bathroom within a bedroom, he went toward the room and saw § 87(2)(b) had been placed in handcuffs. While § 87(2)(b) was escorted out of the room, PO Acosta opened and searched a drawer and under a bed for any firearms because there were two suspects involved in the call regarding a robbery. PO Acosta stated that he performed the search only to locate the firearms and nothing else. PO Acosta did not receive instruction to perform this search.

In PO Guthrie's BWC footage, at approximately 00m35s of the external timer, after § 87(2)(b) exits the bathroom and leans toward the ground, PO Guthrie enters the bathroom and looks through the toilet tank, bathroom cabinets, behind the shower curtain, and inside multiple plastic bags. After the search, PO Guthrie exits § 87(2)(b).

In PO Acosta's BWC video footage (Board Review 06), at approximately 01m40s, he is seen inside the bedroom. PO Acosta is seen looking inside a few bags, under clothes, and drawers after § 87(2)(b) is placed in handcuffs and taken outside. PO Acosta is not seen searching any other immediate areas. PO Guthrie is also seen searching in the bathroom.

In People v. Matta, 428 N.Y.S.2d 491 (Board Review 55), the court similarly addressed the issue of a search of a residence after the arrest of a defendant in the absence of a warrant. Matta notes that the Fourth Amendment provides protection to a defendant in their home such that officers cannot search a residence in the absence of a warrant or specific exceptions to the warrant requirement. In Matta, the officer's entry into the apartment was deemed to be unlawful since there was no warrant or exceptions to the warrant requirement. The subsequent search was deemed impermissible on

several grounds. Because the entry was impermissible, the officer could not rely upon the plain view doctrine to justify a search because of the “prerequisite of lawful presence in the place of observation.” The court further held that even if the entry were permissible, any search incident to the arrest would be limited to the defendant’s “grab areas” and conducted at or soon after the arrest.

It is undisputed that § 87(2)(b) was arrested in the bathroom inside a bedroom in the residence. It is also undisputed that PO Guthrie searched the following areas in the bathroom: the toilet tank, bathroom cabinets, behind the shower curtain, and inside multiple plastic bags. It is also undisputed that PO Acosta searched the following areas in the bedroom: drawers, inside bags, and under clothes. Both officers stated that they had conducted the search in order to find a possible weapon, which they were informed of in the initial radio call.

§ 87(2)(g) the areas searched by PO Guthrie and PO Acosta were not limited to what was in their plain view and instead encompassed searches of toilet tanks, cabinets, dressers, and bags that they opened to view. Finally, the areas the officers searched were not restricted to the limitation of the grab area. PO Guthrie searched areas of the bathroom that were outside the scope of where § 87(2)(b) could grab, and PO Acosta searched in a different room from where § 87(2)(b) was arrested.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 50).
- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 49).
- Sergeant Xylas has been a member of service for 11 years and has been a subject in 12 CCRB complaints and 24 allegations, of which two were substantiated:
 - 201407556 involved substantiated allegations of entry and threat to damage property against Sgt. Xylas. The Board recommended Charges and the NYPD imposed no penalty.
 - The allegations of entry were dissimilar to the current incident. § 87(2)(g)
- Police Officer Jena Leocadio has been a member of service for six years and has been a subject in four CCRB complaints and ten allegations, of which one was substantiated.
 - 201805781 involved a substantiated allegation of a vehicle search against PO Leocadio. The Board recommended Command Discipline A and the NYPD imposed Formalized Training.
 - § 87(2)(g)
- Police Officer Joshua Acosta has been a member of service for six years and has been a subject in one CCRB complaint and two allegations, none of which were substantiated. § 87(2)(b)
- Police Officer Alvin Guthrie has been a member of service for six years and has been a subject in one CCRB complaint and one allegation which has not been substantiated. § 87(2)(b)

§ 87(2)(g)

- Police Officer Sukhdeep Singh has been a member of service for two years and this is the first CCRB complaint to which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming loss of liberty, extreme fear, humiliation, emotional distress, damage to reputation, physical and emotional injury, and seeking \$500,000 as redress (Board Review 56). § 87(2)(a)

- [illegible]

Squad No.: 12

Investigator: Shadman Khan Investigator Shadman Khan March 9, 2021
Signature Print Title & Name Date

Squad Leader: Carlmais Johnson IM Carlmais Johnson May 20, 2021
Signature Print Title & Name Date

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____